

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3572 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AMRISH @ MUNNO RAJNIKANT SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr. H.R.Prajapati for the petitioner and learned AGP Mr. D.P.Joshi for the respondents. The detention order dated 16.1.99 passed by respondent no.2 - Commissioner of Police, Ahmedabad city in exercise of power conferred under section 3(1) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure B inter alia indicate that two criminal cases vide CR No. 73/97 dated 29.5.97 and 174/98 dated 4.12.98 are registered against the petitioner for the offences made punishable under Indian Penal Code, Bombay Police Act and Arms Act. That the first case is pending for trial in the court while the other is pending investigation. Over and above that, three witnesses on assurance of anonymity have supplied information against the petitioner in respect to his anti-social activities and the incidents dated 29.11.98, 5.12.98 and 9.12.98 respectively.

#. That on the basis of the aforesaid material, respondent no.2 as detaining authority has come to conclusion that the petitioner is a "dangerous person" within the meaning of section 2(c) of PASA. That resort to general provisions of law is insufficient to prevent the petitioner from continuing his criminal activity and as such the impugned order has been passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that though the petitioner was in judicial custody, the detaining authority has passed the detention order without considering the aspect of less drastic remedy like cancellation of bail which shows non application of mind vitiating the subjective satisfaction and hence the detention order is invalid.

#. In the matter of Zubedabibi Rashidkhan Pathan v. State of Gujarat, reported vide 1995 (2) GLR P. 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail under section 437(5) of Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of L.P.A. No.1056 of 1999 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ). That in the instant case, the detaining authority has observed in penultimate para of grounds of detention that the petitioner is released on bail in respect to CR No. 73/97. However, he is in judicial custody in respect to other case being CR No. 174/98. The detaining authority has shown apprehension that the petitioner having made application for bail, in all possibility he is likely to be released on bail and after getting released on bail, he is likely to continue his anti-social activity and as such, the detention order is necessary. It may be noted that the said subjective

satisfaction is based on an apprehension and not on the material produced on record. Furthermore, non consideration of less drastic remedy available under section 437(5) of Cr.P.C. has vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 16.1.99 passed by respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Amrish @ Munno Rajnikant Shah is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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